

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION**

BOBBY W. MANESS, *an individual*

Plaintiff,

V.

**XCEL ENERGY SERVICES INC.,
DBA XES, a Delaware Corporation,
SOUTHWESTERN PUBLIC SERVICE,
a New Mexico Corporation,
G4S SECURE SOLUTIONS (USA) INC.,
f/k/a The Wackenhut Corporation,
a Florida Corporation,**

Defendants.

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Civil Action No. 2:10-cv-00200-J

**XCEL DEFENDANTS' MOTION TO STRIKE CONSENT
FORM OF DANNY D. MOATS AND BRIEF IN SUPPORT**

Defendants Xcel Energy Services Inc. d/b/a XES (“XES”) and Southwestern Public Service (“SPS”) (collectively, the “Xcel Defendants”) file this Motion to Strike the Consent Form filed by Danny D. Moats as follows:

I. FACTUAL BACKGROUND

On August 18, 2010, Plaintiff filed this action against XES and SPS purportedly asserting a collective action claim under the Fair Labor Standards Act (“FLSA”) on behalf of himself and all other similarly situated individuals. (Dkt. 1.)

On August 23, 2010, although he had not yet sought collective action certification, Plaintiff Bobby W. Maness (“Plaintiff”) filed a Notice of Filing Consent on behalf of Danny D. Moats (the “Moats Consent”). (Dkt. 4.)

On January 21, 2011, Plaintiff filed his Motion for Order Authorizing Notice to Potential Plaintiffs Similarly Situated. (Dkt. 32.) Defendants opposed the Motion on several bases,

including the fact that Plaintiff was not similarly situated to his proposed class members, such as Moats. (Xcel Defs.' Opp. at pp. 10-14, Dkt. 42; Def. G4S's Opp. at pp. 3, 9, Dkt. 44.)

On April 21, 2011, this Court issued an order denying Plaintiff's Motion to conditionally certify an FLSA collective action. (Dkt. 47.)

II. LEGAL ARGUMENT

In light of the Court's April 21, 2011 Order, the Moats Consent is legally moot. *See Murray v. Tyson Foods, Inc.*, 2010 U.S. Dist. LEXIS 16556, at *15 (D. Ill. Feb. 24, 2010) (explaining that "[i]n the absence of a complaint containing a representative claim ..., the already-filed consents are legally without meaning, just as they would be if there had been a motion to certify that the Court denied").

Moreover, as discussed in the Xcel Defendants' Opposition to Plaintiff's Motion for Notice (Dkt. 42), which is incorporated in full by reference herein, Moats is an improper Plaintiff because he was employed by a different entity that is not a party to this, under a different contract, in a different location, and performing different services than Plaintiff. (Xcel Defs.' Opp. at pp. 10-14, Dkt. 42.) In addition, Moats is asserting that Defendants violated the FLSA by denying him benefits, whereas Maness is asserting that Defendants violated the FLSA by denying him overtime compensation. (*Id.*) Because Moats' purported FLSA claim arises under an entirely different set of circumstances than Maness' claim, joining these two Plaintiffs and claims does not promote judicial economy and would harm the Xcel Defendants, thereby making joinder improper. *See* FED. R. CIV. P. 20.

III. CONCLUSION

For these reasons, as well as those set forth in Defendant G4S's Response in Opposition to Plaintiff's Motion for Notice, the Xcel Defendants ask this Court to strike the Consent Form

filed on behalf of Danny D. Moats; and grant the Xcel Defendants all such other relief at law and equity to which they may be justly entitled.

Respectfully submitted,

/s/ Ronald E. Manthey

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**ATTORNEYS FOR DEFENDANTS, XCEL
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SOUTHWESTERN PUBLIC SERVICE
COMPANY.**

CERTIFICATE OF CONFERENCE

I hereby certify that I conferred with Plaintiff's counsel of record, Phillip Russ, and he indicated that Plaintiff is opposed to the relief sought herein.

I further certify that I conferred with counsel for Defendant G4S Secure Solutions (USA) Inc., Robert Vartabedian, who indicated that Defendant G4S is not opposed to the relief sought herein.

/s/ Elizabeth M. Bedell

Elizabeth M. Bedell

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing has been served upon all counsel of record via the Court's CM/ECF Filing System on this 16th day of May 2011, as follows:

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